

Decision **DRAFT ALTERNATE DECISION OF PRESIDENT PEEVEY****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking to implement the provisions of
Public Utilities Code § 761.3 enacted by Chapter
19 of the 2001-02 Second Extraordinary
Legislative Session.

R.02-11-039
(Filed November 21, 2002)

ORDER REMOVING SEMPRA ENERGY AS A RESPONDENT

On November 21, 2002, the Commission opened this proceeding and named eight respondents. On September 4, 2003, the Commission named 16 additional respondents. (Decision (D.) 03-09-002.)¹ Among the additional respondents was an entity identified as Sempra represented by David Follett.

On September 15, 2003, Sempra Energy Resources (SER) and Sempra Energy Elk Hills Power Corp. (SEEHP) filed and served a motion for modification or clarification of D.03-09-002. By Ruling dated September 23, 2003, the motion was granted by clarifying and correcting the named respondent from Sempra to Sempra Energy, represented by Follett.

On October 14, 2003, Follett filed and served a motion for Sempra Energy asking for reconsideration of the Ruling dated September 23, 2003. Sempra

¹ Also, on October 2, 2003, the Commission deleted two respondents. (D.03-10-012.) On November 13, 2003, the Commission deleted a respondent and added a respondent. (D.03-11-009.)

Energy asks that the Commission clarify that it is not an appropriate respondent, and remove Sempra Energy from the list of named respondents. No responses have been received. The motion is granted.

Discussion

This proceeding is opened for the purpose of implementing Public Utilities Code § 761.3.² Facilities covered by this law include, with limited exceptions, all electric generation facilities “owned by an electrical corporation or located in California.”³ (§ 761.3(a).) An electrical corporation includes “every corporation or person owning, controlling, operating, or managing any electric plant for compensation within” California, with some exceptions.⁴ (§218(a).) Respondents are public utilities, electrical corporations, and owners and operators of divested plant in California subject to § 761.3. (*See* D.03-09-002, *mimeo.*, pages 2 - 3.)

² All statutory references are to the Public Utilities Code unless specified otherwise.

³ Exceptions include (a) nuclear-powered plants, (b) qualifying facilities, (c) generation installed exclusively to serve a customer’s own load, (d) facilities owned by a local publicly owned electric utility, (e) public agency electric facilities that generate electricity incidental to the provision of water or wastewater treatment, and (f) facilities owned by a city and county operating as a public utility. (§ 761.3(d) and (h).)

⁴ Exceptions include (a) where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others, (b) a corporation or person employing cogeneration technology or a non-conventional power source for limited purposes, (c) a corporation or person employing landfill gas technology for limited purposes, (d) a corporation or person employing digester gas technology for limited purposes, or (e) a corporation or person employing cogeneration technology or non-conventional power sources that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989. (§ 218(a) – (e).) These exceptions are generally already within the exceptions covered by § 761.3(d) and (h).

The Ruling dated September 23, 2003 is based on the company's statement that Sempra Energy "is a holding company that through various subsidiaries and affiliates, provides a wide spectrum of electric...products and services to a diverse range of customers...in California..." (SER and SEEHP Motion dated September 15, 2003, pages 3-4.) The Ruling mistakenly concluded that "Sempra Energy is understood to be an electrical corporation that owns, controls, operates, or manages electric plant for compensation within California through various subsidiaries and affiliates." (Ruling dated September 23, 2003, page 4.)

The latest motion now makes clear that "Sempra Energy does not own, control, operate, or manage an electric generation facility." (Motion dated October 14, 2003, page 6.⁵) We conclude based on this representation that Sempra Energy does not own, control, operate or manage any electric plant for compensation within California or located in California, either directly or indirectly through any subsidiaries, affiliates or related corporate entities. Therefore, Sempra Energy should not be a respondent.

Comment on the Draft Alternate Decision

The alternate draft decision of President Peevey was the original draft decision of Administrative Law Judge Mattson filed and served on December 4, 2003. Comments were filed and served on December 9, 2003, by Sempra Energy.

⁵ All pleadings are filed in compliance with Rule 1 of the Commission's Rules of Practice and Procedure (Rules), which says in relevant part: "Any person who signs a pleading...or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to...never mislead the Commission or its staff by an artifice or false statement of fact or law." We rely on the truthfulness of all statements in the pleading filed by Follet for Sempra Energy.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner. Burton W. Mattson is the assigned Administrative Law Judge regarding this portion of the proceeding.

Findings of Fact

1. On October 14, 2003, Sempra Energy filed and served a motion, no responses have been received, and the motion is uncontested.
2. Sempra Energy does not own, control, operate or manage any electric plant for compensation within California or located in California, either directly or indirectly through any subsidiaries, affiliates or related corporate entities.

Conclusions of Law

1. The motion of Sempra Energy dated October 14, 2003 should be granted as provided herein.
2. This order should be effective immediately to correct respondent status and the service list without delay.

O R D E R

IT IS ORDERED that:

1. The motion of Sempra Energy dated October 14, 2003 is granted. Sempra Energy is removed from the list of respondents, and removed from the service list.

2. The Commission's Process Office will, as soon as reasonably possible, make this change to the service list, and post the updated service list on the Commission's web page. The proceeding remains open.

This order is effective today.

Dated _____, at San Francisco, California.